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Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554 AUG 27 1991

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Posted
8-29-91

In re Application of
PERLA ACOSTA OJEDA
For Construction Permit
For a New FM Station on
Channel 243A in
Hobbs, New Mexico

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
File No. BPH-910705M

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AUG 28 1991

FM EXAMINERS

To: Chief, Mass Media Bureau

AUG 28 3 05 PM '91
AUDIO SERVICES

OPPOSITION TO PETITION TO DISMISS APPLICATION

Perla Acosta Ojeda ("Ms. Ojeda"), by her counsel and pursuant to §1.45 of the Commission's rules, hereby opposes the "Petition to Dismiss Application" filed by Rosemary Houston ("Petitioner") on August 12, 1991. In support whereof, Ms. Ojeda respectfully states as follows:

1. Initially, Petitioner and Ms. Ojeda were the only two applicants for the above-captioned facility. Both parties filed their applications with the Commission on July 5, 1991. However, Petitioner's application was subsequently rejected by the Commission as unacceptable for tender because it contained no information regarding the applicant's legal qualifications. Hence, Ms. Ojeda is the only viable applicant for the Hobbs FM station.

2. Petitioner contends that Ms. Ojeda's application should be dismissed for failure to comply with §73.3580 of the Commission's rules. Specifically, Petitioner asserts that Ms. Ojeda neglected to publish local notice of her application within the 30-day period provided for by the rules. Moreover, Petitioner speculates that Ms. Ojeda intentionally failed to publish local notice within the 30-day period in order to deprive the public of an opportunity to review her application. However, as demonstrated below, Ms. Ojeda has substantially complied with the Commission's local public notice requirements, and her delay in publishing local notice was inadvertent and unintentional. Accordingly, Petitioner's request should be denied.

3. Ms. Ojeda's application was tendered to the Commission on July 5, 1991. Accordingly, local notice of her application should have been completed by August 5, 1991. Attached hereto as Exhibit 1 is an affidavit of publication from Anita Boudreaux, Office Manager of the Hobbs Daily News-Sun, which establishes that local notice of Ms. Ojeda's application was published in that newspaper on August 16, 1991.^{1/} Similarly, attached as Exhibit 2 is an affidavit of publication from Kathi Bearden, General Manager of the Hobbs Daily News-Sun, which

^{1/} Appended to Exhibit 1 is a letter from Ms. Boudreaux which states that Ms. Ojeda visited the newspaper on August 14, 1991, and attempted to have the notice published on August 15, 1991. However, as that letter indicates, the newspaper could not run the notice until August 16, 1991.

establishes that local notice was also published in that newspaper on August 20, 21 and 22, 1991. Thus, publication of the requisite notice was completed a mere 17 days after the time provided for by the rules.

4. While publication was concededly accomplished outside the 30-day time period specified in §73.3580 of the Commission's rules, the minor delay in completing publication was de minimis and, contrary to Petitioner's wholly unsubstantiated allegations, completely unintentional. In other more egregious instances where publication has been substantially delayed, the Commission has recognized that the public interest would be served by permitting the applicant to publish notice late. See, e.g. United Broadcasting Co. of Eastern Maryland, Inc., 51 RR 2d 1393 (1982) (applicant that failed to provide evidence that local notice published was permitted to accomplish publication after designation for hearing); Intercontinental Radio, Inc., 50 RR 2d 1073 (1981) (applicant permitted to publish local notice after designation for hearing where there was no evidence that local notice of filing had previously been published). Here Ms. Ojeda has, in good faith, substantially complied with the Commission's local notice rules. Moreover, dismissal of Ms. Ojeda's application would eliminate the sole viable applicant for the Hobbs station, thereby delaying the initiation of a new broadcast service to the public. Clearly, Ms. Ojeda's minor delay does not merit the draconian sanction of dismissal, and

dismissing her application would be contrary to the public interest.

~~Regarding for the foregoing reasons Petitioner's~~

EXHIBIT 1

AFFIDAVIT OF PUBLICATION

State of New Mexico,
County of Lea.

I, Anita Boudreaux

of the Hobbs Daily News-Sun, a daily newspaper published at Hobbs, New Mexico, do solemnly swear that the clipping attached hereto was published once a week in the regular and entire issue of said paper, and not a supplement thereof for a period

of _____

One Day

Beginning with the issue dated

August 16, 19 91
and ending with the issue dated

August 16, 19 91

A. Boudreaux

Office Manager
Sworn and subscribed to before

me this 16th day of

August, 19 91

Marina Calvillo
Notary Public.

My Commission expires _____

July 22, 19 95
(Seal)

This newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Laws of 1937, and payment of fees for said publication has been made.

LEGAL NOTICE

August 16, 18, 19,
20, 21, 22, 1991

PUBLIC NOTICE

On July 3, 1991, Perla Acosta Ojeda filed an application with the Federal Communications Commission, Washington, D.C., for authority to construct a new Class A FM station on Channel 243 A at Hobbs, New Mexico. The principals of the applicant Perla Acosta Ojeda Individual are (none and limited partners, all those holding 10% or more capital stock). The applicant proposes to operate from studios located at 108 South Willow, Hobbs, New Mexico 88240, from a transmitter located at Latitude 32° 46' 10.5" Longitude 103° 07' 04" and an antenna at a height of 91 meters above ground with an effective radiated power of 3.0 kw. Copies of this application and related material are located at Hobbs Public Library during normal business hours.

Hobbs Daily News-Sun

201 N. Thorp
P.O. Box 860

Fax 505-393-5724

(505) 393-2123
Hobbs, NM 88240

August 16, 1991

TO WHOM IT MAY CONCERN:

Please be advised that Perla Acosta Ojeda came to our office Wednesday, August 14, 1991 to place the attached Legal Notice for publication in the August 15, 1991 issue of the paper.

We were unable to run this Notice until today, Friday, August 16, 1991.

Sincerely,



Anita Boudreaux
Office Manager

EXHIBIT 2

AFFIDAVIT OF PUBLICATION

State of New Mexico,
County of Lea.

I, Kathi Bearden

of the Hobbs Daily News-Sun, a daily newspaper published at Hobbs, New Mexico, do solemnly swear that the clipping attached hereto was published once a week in the regular and entire issue of said paper, and not a supplement thereof for a period

of _____

Three weeks.
Beginning with the issue dated

August 20, 19 91
and ending with the issue dated

August 22, 19 91

Kathi Bearden
General Manager

Sworn and subscribed to before

me this 22nd day of

August, 19 91

Marina Cahillo
Notary Public.

My Commission expires _____

July 22, 19 95
(Seal)

This newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Laws of 1937, and payment of fees for said publication has been made.

LEGAL NOTICE
August 20, 21, 22, 1991
PUBLIC NOTICE

On July 3, 1991, Perla Acosta Ojeda of 110 South Willow Street in Hobbs, New Mexico, filed an application with the Federal Communications Commission, Washington D.C., for authority to construct a new class A F.M station on Channel 243 A (96.5 MHz) in Hobbs, New Mexico.

Pearl Acosta Ojeda the Applicant proposes to operate from studios located at 108 South Willow Street in Hobbs, New Mexico, from a transmitter located at latitude 32° 46' 10.5", Longitude 103° 07' 04" and an antenna at a height of 91 meters above ground with an effective radiated power of 3.0 K.W.

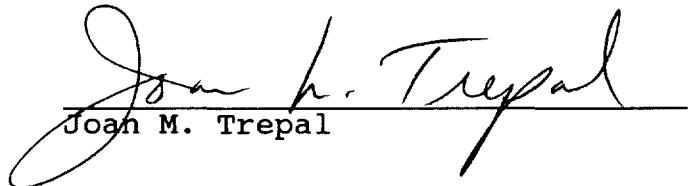
Copies of this application and related material are located at the Hobbs Public Library during normal business hours.

CERTIFICATE OF SERVICE

I, Joan M. Trepal, a secretary in the law firm of Mullin, Rhyne, Emmons and Topel, hereby certify that on this 27th day of August, 1991, copies of the foregoing "Opposition To Petition To Dismiss Application" were sent by first class mail, postage prepaid, to the following:

* Mr. James Crutchfield
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W.--Room 332
Washington, D.C. 20554

Glen L. Houston, Esq.
1010 North Fowler
Hobbs, NM 88240
Counsel for Rosemary Houston


Joan M. Trepal

* Hand Delivered